

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 562, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 2, between lines 17 and 18, begin a new paragraph and insert:
- 2 "Sec. 6. As used in this chapter, "cost of divestment" means the
- 3 sum of the following:
- 4 (1) The costs associated with the sale, redemption, divestment,
- 5 or withdrawal of an investment.
- 6 (2) The costs associated with the acquisition and maintenance
- 7 of a replacement investment.
- 8 (3) A cost not described in subdivision (1) or (2) that is
- 9 incurred by the fund in connection with a divestment
- 10 transaction.
- 11 Sec. 7. As used in this chapter, "direct holdings" means all
- 12 securities of a company held directly by a fund or in an account in
- 13 which the fund owns all shares or interests.
- 14 Sec. 8. As used in this chapter, "fund" refers to the following:
- 15 (1) The Indiana state teachers' retirement fund.
- 16 (2) The public employees' retirement fund.
- 17 Sec. 9. As used in this chapter, "inactive business operations"
- 18 means the mere continued holding or renewal of rights to property
- 19 previously operated to generate revenues but not presently
- 20 deployed for that purpose.
- 21 Sec. 10. As used in this chapter, "indirect holdings" means all

1 securities of a company that are:

- 2 (1) held in an account or a fund; and
- 3 (2) managed by one (1) or more persons:
 - 4 (A) who are not employed by the fund; and
 - 5 (B) in which the fund owns shares or interests together
 - 6 with other investors not subject to this chapter.

7 Sec. 10.2. (a) As used in this chapter, "military equipment"
 8 means weapons, arms, or military defense supplies provided
 9 directly or indirectly to any force of a state sponsor of terror. The
 10 term includes any equipment that readily may be used for military
 11 purposes, including:

- 12 (1) radar systems; or
- 13 (2) military grade transport vehicles.

14 (b) The term does not include weapons, arms, or military
 15 defense supplies sold to peacekeeping forces that may be
 16 dispatched to a state sponsor of terror by the United Nations or the
 17 African Union.

18 Sec. 10.4. (a) As used in this chapter, "mineral extraction
 19 activities" means the exploration, extraction, processing,
 20 transporting, or wholesale sale of elemental minerals or associated
 21 metals or oxides, including:

- 22 (1) gold;
- 23 (2) copper;
- 24 (3) chromium;
- 25 (4) chromite;
- 26 (5) diamonds;
- 27 (6) iron;
- 28 (7) iron ore;
- 29 (8) silver;
- 30 (9) tungsten;
- 31 (10) uranium; and
- 32 (11) zinc.

33 (b) The term includes the facilitation of mineral extraction
 34 activities, including the provision of supplies or services in support
 35 of mineral extraction activities.

36 Sec. 10.6. (a) As used in this chapter, "oil related activities"
 37 includes:

- 38 (1) the export of oil;
- 39 (2) the extraction of or production of oil;
- 40 (3) the exploration for oil;
- 41 (4) the ownership of rights to oil blocks;
- 42 (5) the refining or processing of oil;

- (6) the transportation of oil;**
- (7) the selling or trading of oil; or**
- (8) the construction or maintenance of a pipeline, a refinery, or another oil field infrastructure.**

(b) The term includes the facilitation of oil related activities, including the provision of supplies or services in support of oil related activities. The mere retail sale of gasoline and related consumer products is not considered an oil related activity.

Sec. 10.8. As used in this chapter, "power production activities" means any business operation that involves a project commissioned by a state sponsor of terror whose purpose is to facilitate power generation and delivery. The term includes the following:

- (1) Establishing power generating plants or hydroelectric dams.**
- (2) Selling or installing components for power generating plants or hydroelectric dams.**
- (3) Providing service contracts related to the installation or maintenance of power generating plants or hydroelectric dams.**
- (4) Facilitating power production activities, including providing supplies or services in support of power production activities.**

Sec. 11. As used in this chapter, "private market fund" means any:

- (1) private equity fund;**
- (2) private equity fund of funds;**
- (3) venture capital fund;**
- (4) hedge fund;**
- (5) hedge fund of funds;**
- (6) real estate fund; or**
- (7) investment vehicle;**

that is not publicly traded.

Sec. 12. As used in this chapter, "scrutinized business operations" means business operations that have caused a company to become a scrutinized company.

Sec. 13. (a) As used in this chapter, "scrutinized company" means a company that meets any of the following criteria:

- (1) Both of the following apply to the company:**
 - (A) The company has business operations that involve contracts with or the provision of supplies or services to:**
 - (i) a state sponsor of terror;**
 - (ii) companies in which a state sponsor of terror has any**

1 direct or indirect equity share;

2 (iii) consortiums or projects commissioned by a state
3 sponsor of terror; or

4 (iv) companies involved in consortiums or projects
5 commissioned by a state sponsor of terror.

6 **(B) Either:**

7 (i) more than ten percent (10%) of the company's
8 revenues or assets is linked to a state sponsor of terror
9 involve oil related activities or mineral extraction
10 activities; or

11 (ii) more than ten percent (10%) of the company's
12 revenues or assets is linked to a state sponsor of terror
13 involve power production activities.

14 **(2) The company supplies military equipment to a state**
15 **sponsor of terror, unless the company implements safeguards**
16 **to prevent the use of the equipment by forces actively**
17 **participating in an armed conflict in a state sponsor of terror.**
18 **This subdivision does not apply to companies involved in the**
19 **sale of military equipment solely to any internationally**
20 **recognized peacekeeping force or humanitarian organization.**

21 **(b) The term does not include a social development company.**

22 **Sec. 14. (a) As used in this chapter, "social development**
23 **company" means a company that is:**

24 **(1) licensed by the United States Department of Treasury**
25 **under the Federal Trade Sanction Reform and Export**
26 **Enhancement Act of 2000 (P.L. 106-387); or**

27 **(2) lawfully operating under the laws of another country**
28 **whose primary purpose in a state sponsor of terror is to**
29 **provide humanitarian goods or services.**

30 **(b) A company described in subsection (a)(2) includes a**
31 **company whose primary purpose is to provide:**

32 **(1) food;**

33 **(2) medicine or medical equipment;**

34 **(3) agricultural supplies or infrastructure;**

35 **(4) educational opportunities;**

36 **(5) journalism related activities;**

37 **(6) spiritual related activities or materials;**

38 **(7) information or information materials;**

39 **(8) general consumer goods; or**

40 **(9) services of a purely clerical or reporting nature;**

41 **to aid the inhabitants of a state sponsor of terror.**

42 **Sec. 15. As used in this chapter, "state sponsor of terror" means**

1 a country determined by the Secretary of State of the United States
 2 to have repeatedly provided support for acts of international
 3 terrorism.

4 Sec. 16. As used in this chapter, "substantial action" means
 5 adopting, publicizing, and implementing a formal plan to cease
 6 scrutinized business operations within one (1) year and to refrain
 7 from any new business operations.

8 Sec. 17. (a) Not later than March 30, 2010, each board shall
 9 make a good faith effort to identify all scrutinized companies in
 10 which the fund administered by the board has direct or indirect
 11 holdings.

12 (b) In carrying out its responsibilities under subsection (a), each
 13 board may use existing research or contract with a research firm.

14 (c) A board or a research firm with which the board contracts
 15 under subsection (b) may take any of the following actions:

16 (1) Review publicly available information regarding
 17 companies with business operations in states that sponsor
 18 terror.

19 (2) Contact other institutional investors that have divested
 20 from or invest in companies with business operations in states
 21 that sponsor terror.

22 (3) Contact asset managers that are contracted by the fund
 23 and that invest in companies with business operations in states
 24 that sponsor terror.

25 (d) Not later than the first meeting of the board after March 30,
 26 2010, each board shall compile the names of all scrutinized
 27 companies into a scrutinized company list and indicate whether
 28 each scrutinized company has active or inactive business
 29 operations in a state sponsor of terror.

30 (e) Each board shall update its scrutinized company list at least
 31 on an annual basis based on evolving information from sources
 32 described in subsections (b) and (c).

33 (f) If the Secretary of State of the United States determines that
 34 a country is a state sponsor of terror after June 30, 2009, each
 35 board shall add any additional scrutinized company resulting from
 36 the Secretary of State's determination when each board updates its
 37 scrutinized company list under subsection (e).

38 Sec. 18. After a board creates or updates the scrutinized
 39 company list under section 17 of this chapter, the board shall
 40 immediately identify the companies on the scrutinized company list
 41 in which the fund administered by the board has direct or indirect
 42 holdings.

Sec. 19. (a) Each fund shall send to each scrutinized company:

(1) that is identified under section 18 of this chapter as one in which the fund has direct or indirect holdings; and

(2) that has only inactive business operations;

a written notice concerning the provisions of this chapter and a statement encouraging the company to continue to refrain from initiating active business operations in a state sponsor of terror until the company is able to avoid scrutinized business operations altogether.

(b) Each fund shall continue to correspond on a semiannual basis with scrutinized companies:

(1) in which the fund has direct or indirect holdings; and

(2) that have only inactive business operations.

Sec. 20. (a) Each fund shall send to each scrutinized company:

(1) that is identified under section 18 of this chapter as one in which the fund has direct or indirect holdings; and

(2) that has active business operations;

a written notice concerning the contents of this chapter and a statement indicating that the fund's holdings in the company may become subject to divestment by the fund.

(b) A notice sent under this section must:

(1) offer the company the opportunity to clarify the company's state sponsor of terror related activities; and

(2) encourage the company to:

(A) cease its scrutinized business operations; or

(B) convert the company's operations to inactive business operations in order to avoid divestment by the fund of the fund's holdings in the company;

not later than one hundred eighty (180) days after the date of the notice.

Sec. 21. (a) If, within one hundred eighty (180) days after a fund first sends written notice to a company under section 20 of this chapter, the company ceases scrutinized business operations, the company shall be removed from the fund's scrutinized company list, and sections 22, 23, 24, and 25 of this chapter do not apply to the company unless the company resumes scrutinized business operations.

(b) If, within one hundred eighty (180) days after a fund first sends written notice to a company under section 20 of this chapter, the company converts its scrutinized active business operations to inactive business operations, the company is subject to section 19 of this chapter.

Sec. 22. (a) Except as provided in sections 24 and 25 of this chapter, if a company continues to have scrutinized active business operations one hundred eighty (180) days after a fund first sends written notice to the company under section 20 of this chapter, the fund shall sell, redeem, divest, or withdraw all publicly traded securities of the company that are held by the fund, as follows:

(1) At least fifty percent (50%) of the securities shall be removed from the fund's assets under management within three (3) years after the company's appearance on the scrutinized company list.

(2) At least seventy-five percent (75%) of the securities shall be removed from the fund's assets under management within four (4) years after the company's appearance on the scrutinized company list.

(3) One hundred percent (100%) of the securities shall be removed from the fund's assets under management within five (5) years after the company's appearance on the scrutinized company list.

(b) If a company that ceased scrutinized active business operations following engagement under section 20 of this chapter resumes scrutinized active business operations, the company shall immediately be placed on the scrutinized company list and shall remain on the scrutinized company list while the company continues to have active business operations. A fund that has holdings in the company shall send a written notice to the company as described in section 20 of this chapter indicating that the company has been placed on the scrutinized company list and is subject to divestment. The fund shall sell, redeem, divest, or withdraw all publicly traded securities of the company as provided in subsection (a) based on the date the company is placed back on the scrutinized company list.

(c) A board is not required to divest the board's holdings in a passively managed commingled fund that includes a scrutinized company with active business operations in a state sponsor of terror if the estimated cost of divestment of the commingled fund is greater than ten percent (10%) of the total value of the scrutinized companies with active business operations held in the commingled fund. The board shall include any commingled fund that includes a scrutinized company that is exempted from divestment under this subsection in the board's report submitted to the legislative council under section 26 of this chapter.

Sec. 23. Except as provided in sections 24 and 25 of this chapter,

1 a fund shall not acquire securities of companies on the scrutinized
2 company list that have active business operations.

3 Sec. 24. If the government of the United States declares that a
4 company on the scrutinized company list with active business
5 operations in a state sponsor of terror is excluded from any federal
6 sanctions relating to a state sponsor of terror, the company is not
7 subject to divestment or investment prohibition under this chapter.

8 Sec. 25. Notwithstanding any provision to the contrary, sections
9 22 and 23 of this chapter do not apply to indirect holdings in a
10 private market fund that includes a scrutinized company with
11 active business operations in a state sponsor of terror.

12 Sec. 25.5. Notwithstanding any provision to the contrary,
13 sections 22 and 23 of this chapter do not apply to indirect holdings
14 in actively managed investment funds. However, if a fund has
15 indirect holdings in actively managed investment funds containing
16 the securities of scrutinized companies with active business
17 operations, the fund shall submit letters to the managers of the
18 investment funds requesting that the managers remove the
19 scrutinized companies with active business operations from the
20 fund or create a similar actively managed fund with indirect
21 holdings without scrutinized companies with active business
22 operations. If the manager creates a similar fund, the fund shall
23 replace all applicable investments with investments in the similar
24 fund in a period consistent with prudent investing standards.

25 Sec. 26. (a) On or before November 1, 2010, and thereafter as
26 directed by the legislative council, each board shall submit a report
27 in an electronic format under IC 5-14-6 to the legislative council.
28 Notwithstanding IC 5-14-6-4(b)(2), the submission of a report
29 under this subsection to the executive director of the legislative
30 services agency fulfills the board's requirement to send a copy of
31 the report to each member of the general assembly using the
32 member's senate or house of representatives electronic mail
33 address.

34 (b) A report submitted by the board of a fund under this section
35 must include at least the following information, as of the date of the
36 report:

- 37 (1) A copy of the fund's scrutinized company list.
- 38 (2) A summary of correspondence between the fund and
- 39 companies under sections 19 and 20 of this chapter.
- 40 (3) All investments sold, redeemed, divested, or withdrawn by
- 41 the fund in compliance with section 22 of this chapter.
- 42 (4) All commingled funds that are exempted from divestment

1 under section 22 of this chapter.

2 (5) All companies whose securities the fund is prohibited from
3 acquiring under section 23 of this chapter.

4 (6) Any progress made under section 21 of this chapter.

5 Sec. 27. The provisions of this chapter regarding any country
6 determined to be a state sponsor of terror cease to apply to that
7 country on the earlier of the following:

8 (1) The date the Secretary of State of the United States
9 removes the country from its official list of state sponsors of
10 terrorism.

11 (2) The date Congress or the President of the United States,
12 through legislation or executive order, declares that
13 mandatory divestment of the type provided for in this chapter
14 interferes with the conduct of foreign policy of the United
15 States.

16 Sec. 28. With respect to actions taken in compliance with this
17 chapter, including all good faith determinations regarding
18 companies on the scrutinized company list, a fund is exempt from
19 any conflicting statutory or common law obligations, including any
20 obligations with respect to choice of asset managers, investment
21 funds, or investments for fund securities portfolios."

22 Page 2, delete lines 18 through 42.

23 Delete pages 3 through 8.

24 Page 9, delete lines 1 through 5.

(Reference is to SB 562 as introduced.)

and when so amended that said bill do pass and be reassigned to the Senate Committee on Appropriations.

Committee Vote: Yeas 8, Nays 1.

Senator Kruse, Chairperson